

EXHIBIT “D”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
RAYMOND, et al., : Docket #15cv6885
: 1:15-cv-06885-LTS-HBP
Plaintiffs, :
- against - :
THE CITY OF NEW YORK, et al., : New York, New York
: June 20, 2019
Defendants. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE HENRY B. PITMAN
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: This is Raymond versus the City of New York, docket 15cv6885. Counsel, your appearances for the record, please.

MR. JOHN SCOLA: John Scola for the plaintiffs.

MR. YUVAL RUBINSTEIN: Good morning, Your Honor, Yuval Rubinstein for the defendants.

THE COURT: Good morning, all. We are here today to address some discovery issues. Let me start with the easy one first. I guess the issue with the assertion of privilege at the deposition the other day on Friday, that's no longer an issue?

MR. SCOLA: That's correct Your Honor, I did some research and I withdrew that.

THE COURT: All right, great. All right, we are here to address the issues raised in the following letters. I have letters from plaintiffs' counsel dated June 1, two letters from plaintiffs' counsel dated June 1 and a responsive letter from the defendants dated June 7. I take it that's the universe of relevant correspondence, is there anything else I should have from plaintiff?

MR. SCOLA: No, I think that's it for now, Your Honor.

THE COURT: Okay, anything else I should have

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2 from defendant?

3 MR. RUBINSTEIN: There is one other issue I will
4 probably raise during our discussion.

5 THE COURT: First answer my question, is there any
6 other correspondence I should have?

7 MR. RUBINSTEIN: No, Your Honor.

8 THE COURT: Go ahead, what did you want to
9 say?

10 MR. RUBINSTEIN: Just in terms of the issue of
11 the memo book for Mr. Serrano, I do have additional
12 documentation but we can address that later on.

13 THE COURT: All right, we're going to go
14 through those. All right, Mr. Scola, what do you want
15 to talk about first, there's several issues raised in
16 your letter, which, by the way, both sides can remain
17 seated, you can be comfortable

18 MR. SCOLA: Thank you, Your Honor.

19 THE COURT: What do you want to talk about
20 first?

21 MR. SCOLA: We can just go right from the
22 beginning with the electronically stored information,
23 the ESI search terms I think is a good place to start.

24 THE COURT: All right, and your search terms
25 are the last names of each of the plaintiffs?

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MR. SCOLA: Yes, Your Honor.

THE COURT: Do we know how many documents that's going to retrieve, Mr. Rubinstein? You can sit --

MR. RUBINSTEIN: I'm sorry. I had the discussion with the e-discovery group, I think our concerns really are for, it's difficult for us to conduct a search and impress it upon them, but our concerns are --

THE COURT: It's difficult, I just didn't hear what you said, it's difficult what?

MR. RUBINSTEIN: It's not how we usually run ESI searches, so it's difficult to get a precise count. But our concerns were Gonzalez and Raymond, simply because Gonzalez is a very common last name and what they told me is for Gonzalez they have well over 100,000, I believe it was 121,354 just for Gonzalez.

THE COURT: First of all, what custodians are we talking about here?

MR. RUBINSTEIN: There's four I believe, I think it's just the four individual defendants.

THE COURT: All right, so that's Bratton, O'Neill, McCormack, and Tsachas?

MR. RUBINSTEIN: Yes.

THE COURT: Okay. I take your point about

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2 Gonzalez being a very common name in New York, were test
3 searches run with any of the defendants, any of the
4 plaintiffs' names?

5 MR. RUBINSTEIN: The 121,000 does include, I
6 mean, you mean the full name, Your Honor?

7 THE COURT: No, I mean my understanding is the
8 plaintiff wants you to run the last names of the
9 plaintiffs, is that right?

10 MR. SCOLA: That's correct.

11 MR. RUBINSTEIN: And that's what we did, Your
12 Honor, yes.

13 THE COURT: Okay, and just give me that number
14 again, please.

15 MR. RUBINSTEIN: Sure, for Gonzalez it's
16 121,354, and again, that's just with the last names.
17 The plaintiffs actually, if you look at exhibit A,
18 they actually wanted emails without the last names as
19 well for Gonzalez and we objected to that as well.

20 THE COURT: All right. And let me ask you
21 something, when the department, when there are emails
22 within the department referencing a police officer, is
23 the badge number ordinarily included?

24 MR. RUBINSTEIN: That's a good question, I do
25 not know the answer to that. I think the issues with

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2 these searches is that it could be also not just the
3 police officer but it could be a member of the public
4 with the last name.

5 THE COURT: No, I understand that and I'm just
6 wondering if the protocol for sending emails is to
7 include the officer's name and badge number. I don't
8 know if that's the case, I'm asking the question. I
9 mean if the protocol is to include the badge number,
10 that might be a more targeted search.

11 MR. RUBINSTEIN: That's a good question, Your
12 Honor, I can discuss that with the client, I don't
13 have an answer offhand today.

14 THE COURT: Okay. Well let me come back to
15 Mr. Scola for a second, what's wrong with the search
16 terms that have been produced by, have been suggested
17 by defense counsel, what do you think they would not
18 capture?

19 MR. SCOLA: Well depending on how people word
20 emails, it is not exactly clear what they would
21 capture or they wouldn't capture at this point.

22 THE COURT: Well you never know for sure. I
23 mean with all ESI searches one can never be sure that
24 you're capturing everything, but the Federal Rules
25 don't require capturing everything.

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MR. SCOLA: Well I would like to know what the amount of responses were for the other names. I think Baez is a less common name, and I think Raymond is a less common name, at least for a last name.

THE COURT: Less common may mean you get 100,000 hits instead of 121,000 hits.

MR. SCOLA: Well 100,000 hits for Gonzalez seems, I mean that seems like crazy high to me.

THE COURT: One-hundred-twenty-one.

MR. SCOLA: Yeah, 121,000 hits for Gonzalez on an email. I mean specifically and email --

THE COURT: You're not suggesting Mr. Rubinstein is misstating the facts, are you?

MR. SCOLA: No, I'm not saying that, I'm just saying if there is 100,000 hits for just McCormack saying Gonzalez, I think that's a little bit different than if it's the total amount. Maybe we could lessen it for --

THE COURT: Is the 121,000 for all four custodians or just one?

MR. RUBINSTEIN: Just for Gonzalez, Your Honor.

THE COURT: No, custodians.

MR. RUBINSTEIN: oh, I'm sorry, that's for all

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custodians, yes.

THE COURT: For all four.

MR. RUBINSTEIN: Yeah.

THE COURT: Okay, go ahead.

MR. SCOLA: I mean at this point I'm not sure exactly how the emails worked within the department. My sense is that if someone sends a retaliatory or a discriminatory email it's not as clear cut as Raymond's activity isn't enough so he should be put on a punishment post. I think there would be more slang in that and more conversational. I don't know exactly how --

THE COURT: I'm not even sure if somebody was saying something that was discriminatory or illegal or retaliatory for the exercise of First Amendment rights, I am not even sure people would put that in an email. It may be the kind of thing people would make a phone call about.

MR. SCOLA: I think you're right on that, Your Honor. And although I would like to see the emails and obviously look for myself, and that includes the phones and text messages that we'll get to I think in a little bit, I --

THE COURT: You still haven't come back to my

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2 question, I mean what's wrong with the search terms
3 suggested by Mr. Rubinstein, these are in exhibit B to his
4 June 7 letter?

5 MR. SCOLA: Just the way that it's worded, the
6 Raymond and activity, I think it's vague in that --

7 THE COURT: It's more specific than Raymond.

8 MR. SCOLA: It's also, it's almost too specific in
9 a way because --

10 THE COURT: No, but that is not the only one.

11 MR. SCOLA: Right.

12 THE COURT: There are multiple search terms
13 for Raymond and, so it's not as if Raymond and
14 activity is the only search term that he's suggesting
15 for Raymond.

16 MR. SCOLA: Your Honor, I think we're focusing
17 on Gonzalez for the voluminous amount but we don't
18 have the numbers on Raymond, Baez or Serrano. If
19 Gonzalez is --

20 THE COURT: You are still not answering my
21 question. My question is what is wrong with the terms
22 suggested by Mr. Rubinstein? ESI searches are never
23 perfect, they are never 100 percent. But the Federal
24 Rules don't require 100 percent.

25 MR. SCOLA: Just the way that they're worded

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with the and. I mean --

THE COURT: What additional terms would you suggest?

MR. SCOLA: I would have to look at it, I made a list of additional --

THE COURT: Well you've had it since June 7.

MR. SCOLA: Okay, let me pull out my list.

THE COURT: I mean, you know, when we have a discovery conference I expect counsel to prepare for it. You shouldn't be, if you are reading these for the first time now, I am going to go back to my chambers and we can reconvene on another day.

MR. SCOLA: Your Honor, I have a list of search terms that I thought were appropriate. The issue with the search terms --

THE COURT: You have other terms you want to propose?

MR. SCOLA: Yeah, I have terms here.

THE COURT: Where are they?

MR. SCOLA: Arrest, numbers --

THE COURT: Without Raymond?

MR. SCOLA: No, no, with Raymond, before Mr. Port, Central Personal Index, confidential performance profile, CPI, CPP, PPR --

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THE COURT: Have you run those by Mr. Rubinstein?

MR. SCOLA: We've run it, this is the first that we're hearing that the search terms for, say, Gonzalez, was 121,000. I didn't know about that.

THE COURT: There was an issue about the search terms before today.

MR. RUBINSTEIN: Your Honor, these were not shared with us, Your Honor, these search terms that are being discussed.

THE COURT: Why didn't you share them with Mr. Rubinstein before today?

MR. SCOLA: I believe that the search of just the last name of our clients was sufficiently --

THE COURT: You are not answering my question.

MR. SCOLA: Because we, any search terms would be limiting.

THE COURT: Pardon?

MR. SCOLA: Any of these search terms would have been limiting. I believe that --

THE COURT: Yes, well that's the purpose of having search terms so that you don't get every email between every employee of the police department between date X and date Y. That's why you have search terms to limit what you are

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looking at.

MR. SCOLA: Heading into this conference I believed that the last names of the plaintiffs was a sufficient search term --

THE COURT: You haven't answered my question though about why you haven't suggested your counter proposals with Mr. Rubinstein before getting here today.

MR. SCOLA: I didn't, I think -- I didn't recommend any search terms, I just made a list actually coming into this.

THE COURT: Have you ever been involved in a litigation involving ESI before this one?

MR. SCOLA: Not really.

THE COURT: You know, usually search terms are the subject of negotiation between counsel, usually the plaintiff is the party seeking ESI, the plaintiff would suggest search terms to defendant, the defendant looks at them, the defendant consults with his IT people. If the defendants has an objection to the search terms or thinks they are too broad or they are not going to capture what's relevant, defendant's attorney calls plaintiff's attorney, they have a conversation, we think search terms one, two and three are good, we think search terms four, five and six are too broad, too narrow, they are not

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2 going to get responsive information. And there is a
3 discussion back and forth about the issues regarding
4 the search terms. And if you can't resolve it after
5 you've had this back and forth, then you come to
6 court, you tell me why your search terms are good, the
7 defendant tells me why there's a problem with the search
8 terms, the defendant tells me what the counterproposal is,
9 but you have this back and forth process before you come to
10 court. And it sounds like that hasn't been done here, and
11 I'm not sure why it hasn't been done.

12 I mean Mr. Rubinstein sent you his counter
13 proposals back in March. And I'm really kind of surprised
14 that in the last three months you haven't had a
15 conversation with him about what you think the problem
16 with his terms are and why you think your terms are
17 better. You know, that really should have happened.
18 Did you respond to Mr. Rubinstein's March 8 email?

19 MR. SCOLA: Yeah, I believe my partner did.

20 THE COURT: Did you pick up the phone and call
21 him and say we think your terms are too limiting, we
22 think they are going to miss X, Y and Z classes of
23 documents?

24 MR. SCOLA: Okay, so reading from a letter
25 drafted by my partner, basically we're under the

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2 impression that adding the qualifiers to the last name
3 would end up limiting the results of the search.

4 THE COURT: Well that's what you want to do,
5 you want to limit the results of the search. That's
6 the purpose of having search terms is to limit the
7 results of the search. That's why we have search
8 terms. Otherwise they'd back up the truck and give you
9 every email sent between date X and date Y, you know,
10 and you're busy for the next five years. Limiting
11 what's produced is not a bad thing, it's a desirable
12 thing.

13 MR. SCOLA: So I guess on that issue then,
14 Your Honor, I guess we have to meet and confer and
15 talk about that and then see what we can resolve.

16 THE COURT: Let me ask this, how burdensome is
17 it, this is a question to Mr. Rubinstein, how
18 burdensome is it to run just the plaintiff's names
19 against the four custodians just to get the number of
20 hits that would be recovered?

21 MR. RUBINSTEIN: We've already done that, Your
22 Honor.

23 THE COURT: I though just did it for --

24 MR. RUBINSTEIN: Oh, I'm sorry, you mean in
25 terms of their full names, Your Honor?

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THE COURT: Hold on, no, no, you did Gonzalez for all four custodians and you got 121,354 hits, right?

MR. RUBINSTEIN: Yeah.

THE COURT: Have you done the last names of the other plaintiffs?

MR. RUBINSTEIN: Yeah, we did. So for Raymond we had, again, this is approximate because this is not usually how we usually run our search terms.

THE COURT: Fair enough.

MR. RUBINSTEIN: But approximately for Raymond 2,200.

THE COURT: Twenty-two-hundred, okay.

MR. RUBINSTEIN: For Baez it was roughly 1,000. And then Serrano, we haven't finished it yet because it's a more difficult one, but it's on the order of a little less than 400, 375 roughly. So it really was Gonzalez that was our primary concern.

I will say --

THE COURT: Well I mean if it's 2,200 for Raymond, and this is across all four custodians, right?

MR. RUBINSTEIN: I believe so, yes.

THE COURT: Okay. Well I mean is there an

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2 issue then as to Raymond, Baez, and assuming Serrano
3 is less than 2,000, is there an issue with respect to
4 those three?

5 MR. RUBINSTEIN: I did speak with our IT
6 department and they still have a concern in terms of
7 capturing emails just with last names. I understand
8 it's not as much as Gonzalez.

9 THE COURT: Yes.

10 MR. RUBINSTEIN: But in terms of capturing the
11 universe I think there was a technical concern. If you
12 want I can provide an affidavit --

13 THE COURT: I'm not sure I understand what the
14 concern is.

15 MR. RUBINSTEIN: Perhaps I'm not the best
16 person --

17 THE COURT: Let me tell you what I understand
18 the issue to be and maybe that will focus the
19 discussion a little more.

20 MR. RUBINSTEIN: Sure.

21 THE COURT: My understanding is that the issue
22 here is drafting search terms that are not overly
23 inclusive, that don't, crafting search terms that do not
24 recover documents irrelevant, that are not relevant to this
25 action.

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2 MR. RUBINSTEIN: And that's one of our concerns,
3 yes.

4 THE COURT: Okay. And you can never do that, you
5 can never craft search terms that are going to eliminate the
6 need for manual review. I mean even if, I mean I'm looking
7 at the second search term in your March 8 email, Raymond and
8 Truancy Unit, I suppose, you know, you might, you know,
9 student Raymond Smith today was picked up by the Truancy
10 Unit by Officer Jones. You know, your search term would
11 capture that, that hypothetical would have nothing to do
12 with this action. So mean there always has to be a level of
13 manual review for relevance and for privilege, I supposed.
14 But the numbers for Raymond, Baez, and assuming
15 Serrano is less than 2,000, I know you told me Serrano
16 wasn't finished yet, you've got relatively modest
17 numbers for the world of ESI. Do we need further
18 limiters for Raymond, Baez and Serrano?

19 MR. RUBINSTEIN: Our preference, respectfully,
20 Your Honor, our preference would be to run the terms
21 that Mr. Scola wrote down. I mean we haven't been
22 provided them, but we are happy to run those terms and
23 they'll give us hopefully a more targeted universe of
24 documents as opposed to just the last name. For
25 example, Raymond is a common first name and last name.

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THE COURT: Right, but if the number if hits is 2,200, that's not that huge a number.

MR. RUBINSTEIN: Understood, Your Honor, but our issue is we'd like a more targeted search to provide more relevant emails. So what we would prefer to do is to run the terms that Mr. Scola has written down and see what we get and then perhaps we can return to these original numbers if there's a problem with Mr. Scola's terms. That would be our preference.

THE COURT: Well I'm just wondering if you are going to spend more time doing that than reviewing, you know, the 3,000 to 5,000 emails that you are going to get for Raymond, Baez and Serrano.

MR. SCOLA: I would like to add that --

THE COURT: Let me see your terms, Mr. Scola.

MR. SCOLA: These are the terms that I wrote down based on the deposition but I want to reiterate that if the numbers are this low, 2,200, 1,000 and 400 --

THE COURT: Let me see your search terms, please. Thanks. Mr. Rubinstein, you don't want to run --

MR. RUBINSTEIN: Okay.

THE COURT: Search term 1) arrest; number 2)

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2 numbers; 3) monthly; 4) performance; 5) performance
3 report; 6), central personnel index; 7) confidential
4 performance profile; 8) CPI; 9) CPP; 10) PPR; 11)
5 quest for excellence. I mean the first page of these
6 are untethered to the plaintiffs, I presume you don't
7 want to run these terms.

8 MR. RUBINSTEIN: Understood, Your Honor.
9 Understood.

10 THE COURT: These are going to get a universe
11 of documents that have nothing to do with this case.

12 MR. SCOLA: Those are just words that came out
13 during depositions that seemed relevant. I didn't
14 speak with Yuval about those searches, they were just
15 notes that I took in the middle of the deposition. I
16 think that --

17 THE COURT: You're proposing them as search
18 terms.

19 MR. SCOLA: I wasn't actually proposing them,
20 I just had --

21 THE COURT: You just told me, you know, you
22 just told me they were your proposed search terms, now
23 you're telling me they're not your search terms.

24 MR. SCOLA: They were search terms I
25 considered. I wrote them down recent, I apologize,

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2 Your Honor.

3 MR. RUBINSTEIN: Your Honor, here's what I
4 suggest. I can go back and discuss with my team and
5 have a further meet and confer conversation regarding,
6 this doesn't solve Gonzalez but at least for the other
7 three custodians I can discuss with my colleagues at
8 the police department if they have any other concerns
9 about these three custodians and then I'll touch base
10 for the three --

11 THE COURT: These three plaintiffs and the
12 four custodians.

13 MR. RUBINSTEIN: Yeah, obviously that still
14 leaves Gonzalez which is obviously a major concern.
15 But at least for those three hopefully we can come to
16 some agreement with Mr. Scola.

17 THE COURT: Let me ask you this, I mean
18 what's, look, there is going to have to be a manual
19 review no matter what search terms you use. I mean
20 usually what happens, my experience in the ESI cases
21 has been after the search terms are run the documents
22 that are recovered are manually reviewed for relevance
23 and for privilege. And my understanding, my experience
24 has been that always happens regardless of the search
25 terms. You know, assuming that Serrano is under 2,000,

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2 for Raymond, Baez and Serrano you are talking about
3 under 5,000 documents. You know, and I appreciate that
4 manual review is burdensome but it's inevitable in
5 these cases. You know, then manual review for 5,000
6 documents, I'm not sure, it doesn't sound to me that
7 it's unduly burdensome and I think you may wind up
8 spending more time trying to fine tune the search than
9 it would take to manually review those 5,000
10 documents.

11 MR. RUBINSTEIN: Understood, Your Honor. So I
12 think at least for those three I think what I'll do is
13 I'll touch base with our team and if they say it's
14 not, if they confirm that it is not unduly burdensome
15 --

16 THE COURT: Well the burden, they're not going
17 to know the burden of the manual review.

18 MR. RUBINSTEIN: Well I mean what I'm saying,
19 if they identify the other technical issues that would
20 affect the burdensome of the review. But if they don't
21 identify those burdens, then I think we can come to an
22 agreement with Mr. Scola for those three. But before I
23 do come to an agreement, I do want to touch base one
24 more time with my colleagues at the police department
25 who handle this. But I think for those three it

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2 should be okay but I just want to touch base one more
3 time.

4 MR. SCOLA: I also want to add that I agree
5 with the three that we just mentioned and then when it
6 comes to Gonzalez we will have a phone call and then
7 figure out what search terms we can agree upon. I
8 didn't know until I got into this conference that the
9 documents that were being, that basically were
10 triggered by this search, were sort of voluminous, we
11 can work that out on the phone or at any date they
12 come back.

13 THE COURT: That's why there should be a meet
14 and confer. I mean, look, presumptively it seems to me
15 that Raymond, Baez and Serrano should be the search
16 terms for those three plaintiffs and I think the
17 parties need to consult with regarding Gonzalez. And
18 I'll tell you right now, look, if you come back, the
19 limitations that are contained in Mr. Rubinstein's
20 March 8 email for Gonzalez seem reasonable. You know,
21 again, in New York City Gonzalez is a fairly common
22 name and, you know, these seem like reasonable
23 limiters.

24 MR. SCOLA: I tend to agree with you, Your
25 Honor. I think a couple of the searches that I had,

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2 Gonzalez and CPI or some internal police lingo, I
3 would like to add to, but I can speak with Mr.
4 Rubinstein and then hopefully come to a consensus on
5 that.

6 THE COURT: Believe me, you don't want every
7 email with the word Gonzalez in it, you really don't.
8 All right, what's your next issue, Mr. Scola?

9 MR. SCOLA: I guess it would be discovery
10 related to Constantin Tsachas, one of the named
11 defendants.

12 THE COURT: All right, and what are you
13 looking for?

14 MR. SCOLA: We would like to see his full
15 employment file, his EPR, which I'm not exactly sure
16 what it is, but it's referenced in several documents.

17 THE COURT: Start by telling me, what do you
18 have for Tsachas?

19 MR. SCOLA: Basically, I don't really think I
20 have much. I don't have any OEO complaints, I don't
21 have --

22 THE COURT: Start with, tell me what you have
23 and then tell me what you want, okay, let's do it that
24 way.

25 MR. SCOLA: Okay, I believe, I don't believe I

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have anything in terms of --

THE COURT: You have no documents regarding Tsachas?

MR. SCOLA: No. I don't have his personnel file --

THE COURT: Nothing.

MR. SCOLA: Not that I, I went through all the discovery myself, I don't believe there was anything there, if I missed it in the 4,000 pages I went through, then maybe I did, but I don't think so. I have no CCRB complains, I don't have --

THE COURT: Do you have the document request for Tsachas?

MR. SCOLA: I believe so.

THE COURT: May I see it, please.

MR. SCOLA: I have defendant's response, number two, I believe.

THE COURT: All right. Thank you. All right, the complete personnel file for defendant Constantin Tsachas including all documents relating to his disciplinary records, promotions records, performance evaluations, performance monitoring, CCRB and IAB histories and underlying investigatory files for any allegations regarding employment discrimination.

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Objection in response to request number two.
Defendants object to this request, defendants object to this document request on the grounds it is overly broad in scope and time and requested information is not relevant to any party's claim or defense. It is not proportional to the needs of the case and is confidential pursuant to Civil Rights Law 50(A).

MR. RUBINSTEIN: Your Honor, that sounds like that was our initial, we ended up amending our responses, that does not sound like our amended response.

THE COURT: Well what was your amended response?

MR. RUBINSTEIN: It just provided more detail pursuant to Your Honor's order from March. I don't know if that matters for purposes of today's discussion.

THE COURT: Well tell me why, but Mr. Scola is correct, you haven't produced anything for Tsachas?

MR. RUBINSTEIN: Well I said at the outset I was not prepared to discuss this. My understanding was the motion to compel was limited to three issues, but I can --

THE COURT: Hold on, let me see, was this

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raised in one of your letters, Mr. Scola?

MR. SCOLA: Yeah, in the letter for an extension of discovery it talks about several outstanding discovery issues.

MR. RUBINSTEIN: But there was a separate letter on the motion to compel, that's what I was responding to, Your Honor.

THE COURT: Why are not prior discrimination complaints against Tsachas relevant here?

MR. RUBINSTEIN: They are, we just don't have any. We looked through his --

THE COURT: There are none?

MR. RUBINSTEIN: In terms of employment discrimination claims, for the other defendant we did find some and we produced those, but we did not find any for Deputy Inspector Tsachas.

THE COURT: How does he pronounce it?

MR. RUBINSTEIN: Tsachas. And if this helps, Your Honor, exhibit E to our opposition was my email summary of a meet and confer discussion, that might help in terms of, again, I didn't know this was going to be discussed at today's conference but I believe exhibit E might help Your Honor to discuss --

THE COURT: All right. Defendant advised with

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respect to Tsachas there are no EEO complaints made against Tsachas. What else would be relevant with respect to Tsachas, Mr. Scola?

MR. SCOLA: Well I think, okay, so basically in a deposition that took place about two weeks ago we had a PBA trustee come in and say that he made complaints on behalf of about six minority officers about Tsachas, one of them --

THE COURT: Made complaints to whom?

MR. SCOLA: He spoke directly to Tsachas about it, he went over Tsachas' head to Inspector Giantassio (phonetic), and even spoke to a chief two levels above regarding Tsachas specifically telling officers two of the times on tape and two other officers that they needed target black males 14 and 21. We also heard at deposition that he specifically ordered plaintiff's direct supervisor to give him a lower evaluation when the direct supervisor specifically testified that the evaluation was a 4.0. There's at least, from these depositions there's at least six other officers that were basically accusing Tsachas of the same type of discriminatory actions. It just seemed hard to believe that none of these were ever investigated and ultimately he was promoted.

THE COURT: Request number two, so you're saying

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2 that there are, there is reason to believe that Tsachas
3 directed that people of color be targeted for arrest?

4 MR. SCOLA: There's no reason to believe, Your
5 Honor, there's a recording of it where he said you
6 need to target black males 14 to 21, there's another
7 recording --

8 THE COURT: All right, but request number two
9 doesn't ask for that, does it? Request number two
10 reads as follows: ``The complete personnel file for
11 defendant of Constantin Tsachas, including all
12 documents relating to his disciplinary record,
13 promotions record, performance evaluations,
14 performance monitoring, CCRB and IAB history, and
15 underlying investigatory files for any allegations
16 regarding employment discrimination.''

17 MR. SCOLA: I mean the performance
18 evaluations, the CPI, the promotions, would be his
19 individual employee record, like his record.

20 THE COURT: No, but I mean what you are
21 looking for here is employment discrimination. Now I
22 would agree with you that if there is reason to
23 believe or if there is evidence that Tsachas thought
24 it appropriate to target individuals of color, that
25 would be relevant because intent is an issue in this

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2 action, and that would be relevant as similar act
3 evidence. But my issue is whether or not document
4 request number two asks for it.

5 MR. SCOLA: Maybe request number two is
6 written kind of vaguely. The files, like the
7 performance evaluations, that wouldn't be specifically
8 tied to employment discrimination, basically we're
9 requesting --

10 THE COURT: I don't see how the performance
11 evaluations are relevant unless they reference
12 employment, allegations against him of employment
13 discrimination.

14 MR. SCOLA: I think it speaks to a larger
15 culture within the department where all the --

16 THE COURT: The issue here are the allegations
17 in the second amended complaint, not --

18 MR. SCOLA: Correct, Your Honor. Okay, so but
19 for instance, the recording of him telling them to
20 target black males 14 to 21 was out in the media. We
21 had deposition testimony which said that that should
22 have triggered an IAB investigation into this and
23 subsequent to that he received a discretionary
24 promotion.

25 So I would like to know A) whether he was ever

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2 investigated and what were the results of that
3 investigation, why was he not punished for that, and
4 why was he ended up being promoted.

5 THE COURT: Well let me come back to Mr.
6 Rubinstein, were there any IAB investigations of
7 Tsachas relating to discrimination?

8 MR. RUBINSTEIN: Usually those, if that
9 happens it would be referred to OEE0 in terms of the
10 NYPD's policy. I can double check --

11 THE COURT: No, I mean discrimination against,
12 not discrimination with respect to employees, but
13 discrimination with respect to members of the public?

14 MR. RUBINSTEIN: I don't know the answer to
15 that. I don't believe it would be within the scope of
16 this case, but I think --

17 THE COURT: Well, no, I mean intent, similar
18 act evidence is relevant when intent is an issue.

19 MR. RUBINSTEIN: Towards other employees, I
20 agree with that.

21 THE COURT: Well, no, I mean if one, if, and
22 look, I'm not saying Tsachas harbors discriminatory
23 animus or not, but if a police officer harbors
24 discriminatory animus toward members of the public who
25 are people of color, that would be relevant with

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2 respect to a claim brought by a subordinate who is an
3 individual of color alleging discrimination.

4 MR. RUBINSTEIN: Respectfully, Your Honor, I
5 don't think under the case law as I understand it, I
6 don't believe that the other act evidence extends that
7 far. But what I can do --

8 THE COURT: Well it certain does. It certainly
9 does in Federal Court.

10 MR. SCOLA: I also want to add, Your Honor --

11 THE COURT: It certainly is relevant,
12 sufficiently relevant for discover purposes.

13 MR. RUBINSTEIN: (inaudible) can double check,
14 Your Honor, I don't know the answer, but I can double
15 check if there are any other claims of discrimination
16 by the public against Deputy Inspector Tsachas. I do
17 agree with Your Honor, I don't believe that's
18 encompassed by this request which only discusses his
19 personnel file, but to move the case along I can
20 certainly touch base with my client on that.

21 MR. SCOLA: Your Honor --

22 THE COURT: With respect to Tsachas, I'm going
23 to order the defendant to produce any IAB or CCRB
24 files regarding Tsachas that involve allegations of
25 discrimination based on race or Hispanic national

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2 origin. What did you want to say, Mr. Scola?

3 MR. SCOLA: I'd also like to add that we also
4 have a recording of the other defendant, Christopher
5 McCormack, at the 40th Precinct also saying target
6 black males 14 --

7 THE COURT: What, let's focus on discovery
8 here. The merit, we're not going to resolve the merits
9 today.

10 MR. SCOLA: No, no, I am asking that the same
11 order be given for defendant McCormack.

12 THE COURT: Where's the request for McCormack?
13 What number is it?

14 MR. SCOLA: I believe two, but that's a
15 different plaintiff, Your Honor. I believe it would
16 be, it's the same request for the other three
17 plaintiffs, it's just Christopher McCormack instead of
18 Constantin Tsachas on a different request. And
19 through the discovery it's been clear that there's --

20 THE COURT: Where's the request for McCormack?
21 Thank you. It's the same request, the same request
22 was drafted for McCormack.

23 MR. SCOLA: Just to add to that, Your Honor,
24 through the discovery that's been provided, there was
25 a reference to defendant McCormack's personnel file.

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2 In that file it said he had 32 incidents with the CCRB
3 and 94 charges. And we also have a same recording
4 with him in a different borough.

5 THE COURT: CCRB charges are for things like
6 excessive force or false arrest, I'm not sure they're
7 relevant here.

8 MR. SCOLA: I think they might be Your Honor,
9 because basically this is a case based on quotas --

10 THE COURT: Based on what?

11 MR. SCOLA: On quotas, arrest quotas, and how
12 the quotas are disproportionately applied to --

13 THE COURT: So an individual who's arrested says
14 McCormack used excessive force in effecting the arrest,
15 what do you do with that?

16 MR. SCOLA: So for the deposition testimony of
17 my clients, it's clear that McCormack has a history of
18 specifically targeting individuals and also conducting
19 unlawful searches which he tried to get my clients to do.
20 And when they refused to target minorities and then
21 illegally search them, they were punished. I would like to
22 see the history of that.

23 THE COURT: Well, I think the same limitation
24 applies to McCormack, that it should be limited to IAB and
25 CCRB files regarding allegations of discrimination based

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2 on race or Hispanic national original.

3 MR. SCOLA: How can you, how can you determine
4 what type of CCRB complaint was based on race if the --

5 THE COURT: Well, presumably because the
6 complaint is going to say McCormack targeted me because
7 I'm an X, or a Y, or a Z.

8 MR. SCOLA: But that's not how CCRB claims work,
9 Your Honor. If someone comes up to me and falsely
10 arrests me, I am not going to say I got falsely
11 arrested because I was black, I'm going to say I got
12 falsely arrested because I got falsely arrested.

13 THE COURT: Well if someone is, if it's not
14 tied to racial discrimination or discrimination based
15 on Hispanic national origin, how is it relevant?

16 MR. SCOLA: It goes to the culture of how
17 they're manufacturing these arrests and then forcing
18 minority officers to hunt minority civilians. It goes
19 to everything that preached on our clients, which is
20 essentially you have to target black males, you need
21 to unlawfully search them, you need to unlawfully stop
22 them, and if you don't, you're punished. And his past
23 history --

24 THE COURT: Hold on a second, hold on a
25 second.

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MR. SCOLA: Sorry.

THE COURT: What kind of door though does that open, I mean let's assume that you are correct and you are permitted to introduce evidence concerning X numbers of arrests where there was a CCRB complaint filed or an IAB complaint filed where the arrestee says I was arrested illegally without probable cause, does that then, and if you are going to offer that to show some impropriety on the part of McCormack or Tsachas, does that then open the door for the defendant in response to say, okay, fine, but in the course of his career, McCormack made X arrests which resulted in conviction?

MR. SCOLA: It may open the door for that, I don't know at this time, Your Honor.

THE COURT: And if the number in the latter category is substantially higher than the number in the former category, how has the analysis been advanced?

MR. SCOLA: All I know is that I have an affidavit from a witness who specifically said that they tried to force them to --

THE COURT: That wasn't my question, whether you have an affidavit from a witness. You are not

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2 answering my questions here, Mr. Scola, and when an
3 attorney does not answer my questions directly, the
4 inference I draw is that he or she doesn't have a good
5 answer.

6 MR. SCOLA: I don't know the answer, Your
7 Honor.

8 THE COURT: What are your thoughts, Mr.
9 Rubinstein?

10 MR. RUBINSTEIN: I strongly agree that this is
11 an employment discrimination case. This was, our
12 office handles many cases involving excessive force
13 and false arrests, this is not one of them. So I just
14 don't see in terms of relevance and proportionality
15 under Rule 26, I don't see how these kinds of claims
16 are relevant. And I disagree with Mr. Scola. I think
17 if a member of the public alleged discrimination that
18 should be reflected in the CCRB complaint. And I can
19 look into that pursuant to Your Honor's order, if
20 there are complaints by the public based on
21 discrimination.

22 THE COURT: Let me ask you this, I mean if
23 someone, how drafts the CCRB complaints, is it drafted
24 by someone in the police department, is it drafted by
25 the complainant, or is there some other process?

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2 MR. RUBINSTEIN: I don't know who drafts it,
3 but it's certainly, I mean I usually see lists of CCRB
4 complaints, I usually, because I work in the labor and
5 employment division I'm not really involved often with
6 CCRB complaints. But from what I see, usually when I
7 see a list of an officer's CCRB complaints, it
8 identifies, you know, false arrest, discrimination, et
9 cetera, et cetera.

10 THE COURT: All right, that's a summary
11 prepared by the police department?

12 MR. RUBINSTEIN: Correct. Yeah, again, because
13 I do employment law, I'm not really involved often
14 with CCRB complaints, so unfortunately I don't have an
15 answer to that. I could look into that, Your Honor,
16 but I do agree with Your Honor's point that if it's
17 beyond discrimination, if it just says I was submitted
18 to excessive force, I just don't see how an EEO case
19 like this, how does that fall within Rule 26?

20 MR. SCOLA: I could answer the --

21 THE COURT: The one concern I have here is if,
22 you know, the CCRB summaries I've seen, if I recall
23 correctly, I think they were prepared by the police
24 department and I'm not sure what level of detail they
25 capture. I mean if somebody calls the CCRB and says,

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2 you know, Officer X arrested me without probable
3 cause, the charges were dropped, I think he arrested
4 me because I'm a person of color, I'm not sure if that
5 would be logged as a false arrest complaint or as a
6 discrimination complaint, or as something else.

7 MR. SCOLA: I can answer this question, Your
8 Honor.

9 THE COURT: Go ahead.

10 MR. SCOLA: For CCRB the complaint is made by
11 the complainant, you call a number or you appear in
12 person and then either, I guess that complaint is
13 memorialized and then it's investigated. I used to do
14 a lot of civil rights cases, a lot of false arrests, I
15 got out of them for a host of reasons. But when a
16 victim of a false arrest makes a CCRB complaint, I've
17 never seen a complainant say it's because they're
18 black or Hispanic or any type of race. They're not
19 focused on that, it's implied. They think that the
20 arrest is false --

21 THE COURT: Well, it's not, when you say it's
22 implied, it's not always implied. I've had 1983 false
23 arrest cases, some of which involved plaintiffs who
24 are individuals of color, some of which involved
25 plaintiffs who were Caucasian, I mean it's, false

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2 arrest cases are not limited to individuals of color.
3 You say it's implied, I think it's just --

4 MR. SCOLA: I think it's, to my clients who I
5 represented who would live in the 40th Precinct in the
6 Bronx, I think they wouldn't know to say that they
7 were being discriminated against. I think they were
8 just making a complaint for either police brutality or
9 illegal search or false arrest. I don't think that
10 they would say that they were being discriminated
11 against because I don't think that's the most
12 immediate concern. I think the most immediate concern
13 was the taking of the liberty or whatever happened
14 that led to the false arrest. I just don't, I don't
15 have any experience with any CCRB complaint with
16 discrimination.

17 THE COURT: If the CCRB report does not
18 reflect a charge of discrimination, what do you do
19 with it?

20 MR. SCOLA: Well I think, okay, so --

21 THE COURT: How is it relevant? How is it
22 relevant to prove discriminatory animus here?

23 MR. SCOLA: Well I don't know how it's
24 relevant at this point.

25 THE COURT: If you can't explain a theory of

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2 relevance, why are you getting --

3 MR. SCOLA: Okay, so essentially, once I get
4 into the CCRB complaints and I see, well, all of these
5 are from people of color, and they're all the same --

6 THE COURT: I don't think the complaint form
7 is going to tell you whether the complainant is a
8 person of color or not. It will probably be illegal to
9 have that information in there.

10 MR. SCOLA: It may be, Your Honor, and I'm not
11 100 percent sure. I just know that from my client's
12 testimony and from speaking with many witnesses, as a
13 way to effectuate this quota, Christopher McCormack
14 specifically ordered minority officers, mine included,
15 to go stop minority officers and then illegally search
16 the people that they stopped. And if there's a history
17 of him doing that, I think it adds to my client's
18 testimony that that's what they were ordered to do and
19 then when they refused, minority officers were
20 disproportionately punished. If there's a history of
21 these types CCRB complaints, which we know there are
22 --

23 THE COURT: I don't know that there are.

24 MR. SCOLA: Well from the testimony of my
25 clients, and after speaking to other members of the

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40th Precinct who are now --

THE COURT: There was testimony about the number of CCRB complaints about McCormack and Tsachas?

MR. SCOLA: No, in the discovery it specifically said that there were stops for illegal searches referenced --

THE COURT: You keep contradicting yourself.

MR. SCOLA: I apologize, Your Honor. Okay, there's two things here. The testimony says that --

THE COURT: Right now we're talking about what documents you get concerning McCormack and Tsachas.

MR. SCOLA: I understand, Your Honor.

THE COURT: Okay, not something, so let's focus on that issue.

MR. SCOLA: You got it. In the discovery which I went through, there was references in an IAB document about --

THE COURT: IAB file of whom?

MR. SCOLA: It was into the investigation and my client testifying about the Floyd stop in the first trial. There were references --

THE COURT: In the IAB file of which plaintiff?

MR. SCOLA: I guess it would be Serrano.

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2 THE COURT: Okay, and what was in Serrano's
3 IAB file?

4 MR. SCOLA: In the IAB file, by bit of
5 background, Serrano was one of the main witnesses in
6 the Floyd stop and frisk trial that broke the blue
7 line and testified against the department regarding
8 McCormack and the quota. In those papers, there's
9 references to McCormack being, giving CCRB complaints
10 or some type of punishment or some type, or some type
11 of investigation into illegal stops and searches.
12 Which is also what my clients testified to, that they
13 were ordered to do, and when they did not comply with
14 these unlawful orders, they were disproportionately
15 punished as minority officers.

16 So I think it goes to a broader picture of
17 whether or not my clients are telling the truth, which
18 I obviously think they are, and whether or not there's
19 this culture of illegally stopping minorities in the
20 40th Precinct. I don't know if any of this would be
21 admissible at trial, but in terms of discovery I would
22 like to see what's there.

23 THE COURT: Well, all right, look, I'm going
24 to adhere to my ruling with respect to Tsachas and
25 McCormack. I'm going to direct the defendant to

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2 produce any IAB or CCRB files regarding either Tsachas
3 or McCormack where there is an allegation of
4 discrimination based on race or Hispanic national
5 origin. There are, people file excessive false
6 complaints, false arrest complaints, some of, you
7 know, unless there is an element of, unless there's a
8 claim of discrimination in the complaint, I don't
9 think it's relevant here.

10 I disagree with your characterization, Mr.
11 Scola, that discrimination is implicit in a false
12 arrest complaint or an excessive force complaint.

13 MR. SCOLA: Well I think it is, in this
14 situation it is --

15 THE COURT: I've seen them brought by
16 individuals who are not individuals of color against
17 police officers who are not individuals of color. I
18 don't think, you know, the statement that
19 discriminatory animus is implicit is I just think
20 wrong.

21 MR. SCOLA: Well I understand what you are
22 saying in general, but I think in this case where you
23 have the defendant on tape specifically saying target
24 black males 14 to 21, and then there are CCRB
25 complaints maybe from African-Americans, maybe from

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Caucasians, I don't know, but I think in this issue if he is specifically saying target a specific minority group, then it is implicit.

THE COURT: Well if he's saying target a minority group, the officer who effected the arrest is not going to be McCormack.

MR. SCOLA: That's true, Your Honor.

THE COURT: So there's not going to be a CCRB complaint against McCormack.

MR. SCOLA: Not in that instance --

THE COURT: No.

MR. SCOLA: But there could be ones where he is the arresting officer.

THE COURT: Well if there are and if they reference discrimination, you'll get them, okay? I think unless there is a reference to discriminatory, to discrimination, I just don't think it's relevant.

All right, what else do you want to talk about?

MR. SCOLA: If you want to go through the ones that were the names that were currently at a disagreement over, we can.

THE COURT: Tell me what you want to talk about?

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MR. SCOLA: All right, number four, I guess,
is all documents referring to or relating to
defendant's document retention or destruction policy.
Now if you recall, when we were here --

THE COURT: Hold on, hold on, I'm just looking
at Mr. Rubinstein's May 24 email. Did he already
address this?

MR. RUBINSTEIN: We did, Your Honor, in the
context of a deposition.

MR. SCOLA: Yes, and you said if they could
provide documents on this that we wouldn't need to
have a deposition. But no documents --

THE COURT: (inaudible) a transcript of that
conference?

MR. SCOLA: I don't.

MR. RUBINSTEIN: That's not my recollection of
the last hearing, Your Honor, I don't have the
transcript. As we point out in this email --

THE COURT: Let me, you know, Mr. Scola, are
these issues that are really teed up in your letters?

MR. SCOLA: In the letter for, in the letter
for the discovery extension there's a list of numbers
that are, responses are outstanding for document
requests. And on the third page of document 116 --

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THE COURT: Have you had a meet and confer on these issues?

MR. SCOLA: Yes --

MR. RUBINSTEIN: In fact, Mr. Nwokoro (phonetic), I resolved many of these issues that are reference on page three of this extension request, that's why I'm a little surprised that plaintiffs' counsel is raising these issues. Two and four are in dispute, but many of these other ones that are listed here were resolved by myself and the colleague for Mr. Scola during our call.

MR. SCOLA: And I apologize for my partner not being here, he's on jury duty in Jersey right now.

THE COURT: Well I'd presume he briefed you before you got here and you know what he knows.

MR. SCOLA: That's correct, Your Honor.

THE COURT: All right, well, tell me why you think the document retention policies are appropriate, Mr. Scola?

MR. SCOLA: Well, we would like to know -- one second. I believe that the information basically on their retention and destruction policy of these documents is relevant to potential issues of document destruction and spoliation and is relevant.

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THE COURT: With respect to potential issues
or actual issues?

MR. SCOLA: We don't know, there's certain
things that are outstanding that we don't have. For
instance, Serrano's memo book.

THE COURT: Yes, my understanding, though, is
that the response to that is that it's lost. Not that
it was destroyed pursuant to a policy. Am I correct
in that, Mr. Rubinstein?

MR. RUBINSTEIN: Yes, Your Honor, I don't
believe it was destroyed per some retention policy.

THE COURT: It was mislaid.

MR. RUBINSTEIN: Correct.

THE COURT: That may be the subject of further
litigation here --

MR. RUBINSTEIN: Right.

THE COURT: But there is no claim here that
this was destroyed because it was X years old and our
policy is to destroy memo books that are more than X
years old. So I'm not sure how it's relevant.

MR. SCOLA: I mean we don't really know
exactly what's missing at this point, I think --

THE COURT: Well what did you ask for that you
didn't get? I mean it's not so much a question of

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2 what's missing as much as it's a question of what did
3 you ask for that you didn't get or what are the
4 obvious holes in the production in response to your
5 requests?

6 MR. SCOLA: I don't have a list of those
7 documents at this time, Your Honor.

8 THE COURT: Nothing like preparation. What
9 are your thoughts, Mr. Rubinstein?

10 MR. RUBINSTEIN: As referenced, Your Honor, we
11 addressed this issue back in January regarding the
12 deposition.

13 THE COURT: Is it in the patrol guide?

14 MR. RUBINSTEIN: I don't offhand know if it's
15 in the patrol guide. I have a January 23 letter where
16 we already addressed this in the context of a 30(B)(6)
17 deposition, that we argue that it was improper
18 discovery on discovery and Your Honor ruled in our
19 favor in terms of the depositions. So we're
20 essentially addressing the same issue in terms of
21 documents rather than deposition testimony. And I
22 just think this issue has already been decided, even
23 if it wasn't relating to documents about retention.

24 THE COURT: All right.

25 MR. RUBINSTEIN: That was docket number 117,

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Your Honor, I'm sorry.

THE COURT: 117.

MR. RUBINSTEIN: Yes.

THE COURT: 117 was your letter?

MR. RUBINSTEIN: That was my response to, yeah, I don't have the docket number for their letter, but my response was at docket 117. I'm sorry --

THE COURT: 118, I think.

MR. RUBINSTEIN: No, yeah, I might have misspoken, my letter is dated January 23rd, Your Honor. And I have another copy of Your Honor would like to see it.

THE COURT: Let me see your copy, it's going to be faster. Thank you. My understanding, correct me if I'm wrong, Mr. Rubinstein, but is there any claim here that the absence of Serrano's memo book is the product of a document retention policy?

MR. RUBINSTEIN: That's not my, I don't believe that claim was ever made, Your Honor, no.

THE COURT: I'm not sure how it's relevant then, Mr. Scola.

MR. SCOLA: To be candid with you, I'm not really sure either.

THE COURT: All right, well then I don't think

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you get it, okay. So I'm going to sustain the objection to, you know, at least on the record that currently exists, the objection to the request for the document retention policy is sustained.

What else do you want to talk about today, Mr. Scola?

MR. SCOLA: I would like to talk about having a briefing schedule for the spoliation motion --

THE COURT: Okay.

MR. SCOLA: As well as --

THE COURT: When do you want to make your motion?

MR. SCOLA: I think thirty days would be sufficient. I also would --

THE COURT: One second.

MR. SCOLA: Sorry.

THE COURT: Let's take it one thing at a time, okay?

MR. SCOLA: Sure.

THE COURT: You want to make your motion on, July 20 is a Saturday, so do you want to make it on Monday, July 22?

MR. SCOLA: That's great, Your Honor.

THE COURT: All right, how much time do you

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want to respond, Mr. Rubinstein?

MR. RUBINSTEIN: We would request I guess three weeks, so maybe 20 or 21 days for opposition.

THE COURT: All right, three weeks is going to be August 12. How much time do you want for a reply, Mr. Scola?

MR. SCOLA: Would August 26 work?

THE COURT: Fine. All right, so that will be the schedule for the spoliation motion, July 22 for the opening round, opposition August 12, the reply on August 26.

MR. SCOLA: Also included in that motion I imagine we'll have to brief the depositions of Commissioner O'Neill and Bratton?

THE COURT: If you want to make that motion at that time, too, that's fine.

MR. SCOLA: I mean we might as well.

THE COURT: Fine. If you want to make one motion with both, that's fine.

MR. SCOLA: Okay. Now I guess the last issue would be --

THE COURT: Does that reply schedule, does the opposition schedule still work if it's going to include the motion to compel the depositions of

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Commissioners Bratton and O'Neill.

MR. SCOLA: That works for me.

THE COURT: Well my question is to Mr.
Rubinstein.

MR. RUBINSTEIN: Yes, that works for the City.

THE COURT: All right, what else, Mr. Scola?

MR. SCOLA: I guess the other issue, the last
outstanding issue would be when we are going to extend
discovery till. I believe I have, I made a note, I
have, I've already conducted four nonparty
depositions, I know all plaintiffs have been deposed.
I have two other nonparty depositions already noticed,
I believe I am going to have to do two more. The
defendants have not yet been deposed yet and I know we're
going to wait on some discovery before we schedule those
again. And then we're going to have to wait on the ruling
for Bratton and O'Neill. I think my partner suggested four
months, but put five months in the date by accident, so I
guess I would propose extending discovery till October 9, I
believe, which is four months from June 9 when discovery was
set to end. I think that should be sufficient.

THE COURT: So the proposed order that was sent
with the June 1 letter proposes a deadline for the
completion of fact discovery to November 9, you are seeking

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2 a month less than that now?

3 MR. SCOLA: Well, I mean, I would take the
4 November 9, I think that might not be, I think if we did
5 October 9 it might get extended, I think November 9 might
6 work, I just wanted to note that in my partner's letter he
7 put four months but noted five. I think --

8 THE COURT: Do you want October 9 or November 9?

9 MR. SCOLA: I'll take November if that's offered.

10 THE COURT: Any objection to that, Mr. Rubinstein?

11 MR. RUBINSTEIN: Given this briefing schedule I
12 guess I don't object to November 9.

13 THE COURT: okay. All right, I'll extend the fact
14 discovery deadline to November 9 and the follow-on dates
15 accordingly, okay?

16 MR. SCOLA: Thank you, Your Honor.

17 MR. RUBINSTEIN: Thank you, Your Honor.

18 THE COURT: All right, what else would you
19 like to talk about today, Mr. Scola?

20 MR. SCOLA: I think that's it.

21 THE COURT: All right, look, I strongly
22 suggest that, I'm not going to strongly suggest, I'm
23 going to order it, that with respect to any other
24 discovery disputes before, and this applies to both
25 sides, if you, if plaintiff has a discovery dispute

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2 with defendant or if defendant has a discovery dispute
3 with plaintiff, I am directing you to have a viva voce
4 conversation about that. You ought to speak to each
5 other. Not exchange letters, not exchange emails,
6 either talk face to face or pick up the phone and have
7 a conversation. I am directing that you do that before
8 you bring it to the Court's attention. Okay?

9 MR. SCOLA: Yes, Your Honor.

10 THE COURT: All right, okay. All right, Mr.
11 Scola, anything else you want to talk about today?

12 MR. SCOLA: No, believe that's it.

13 THE COURT: Okay. Mr. Rubinstein, anything
14 else you want to talk about today?

15 MR. RUBINSTEIN: Nothing for the defendants,
16 Your Honor.

17 THE COURT: All right, let me ask my clerk to
18 return Mr. Rubinstein's January 23 letter to Mr.
19 Rubinstein, and there are two copies, copies of two
20 document requests that Mr. Scola handed up, I'm going
21 to ask that they be returned to Mr. Scola. Adam, one
22 second. There is also a list of search terms that Mr.
23 Scola handed up, I'm going to ask that those go back to Mr.
24 Scola.

25 MR. RUBINSTEIN: Thank you.

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MR. SCOLA: Thank you, Your Honor.

THE COURT: All right, thank you both.

MR. RUBINSTEIN: Thank you, Your Honor.

THE COURT: Thanks, have a good afternoon.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Raymond, et al. versus The City of New York, et al., Docket No. 15cv6885, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Carole Ludwig

Signature _____

Carole Ludwig

Date: July 8, 2019